No. 81672-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JOHN T. LALLAS and IRENE LALLAS, husband and wife,

Plaintiffs/Respondents,

vs.

SKAGIT COUNTY, DEPUTY DEANNA RANDALL,

Defendants/Petitioners,

and

ANTHONY REIJM and JOHN DOES I-III, and JANE DOES I-III,

Defendants.

BRIEF OF AMICUS CURIAE
WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

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On Behalf of Washington State
Association for Justice
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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation organized under Washington law, and a supporting organization to the Washington State Association for Justice (WSAJ). WSAJ Foundation is the new name of Washington State Trial Lawyers Association Foundation (WSTLA Foundation), a supporting organization to the Washington State Trial Lawyers Association (WSTLA), now renamed WSAJ. These name changes were effective January 1, 2009.

WSAJ Foundation, which now operates the amicus curiae program formerly operated by WSTLA Foundation, has an interest in the rights of plaintiffs under the civil justice system, including an interest in the proper application of the doctrine of judicial immunity.

II. INTRODUCTION AND STATEMENT OF THE CASE

This appeal involves proper application of the doctrine of judicial immunity. The action involves a negligence claim for personal injuries by John T. Lallas (Lallas) et ux. against Skagit County (County) and Deanna Randall (Randall or Deputy Randall). The underlying facts are drawn from the Court of Appeals opinion, the briefing of the parties, and the "Declaration of Deputy Deanna Randall." See Lallas v. Skagit County, 144 Wn.App. 114, 182 P.3d 443, *review granted*, 165 Wn.2d 1003 (2008);

County/Randall Pet. for Rev. at 2-6; County/Randall Br. at 3-5; Lallas Br. at 1-2; CP 115-17 (Randall declaration).

For purposes of this amicus curiae brief, the following facts are relevant. On September 4, 2002, Skagit County District Court Judge Stephen Skelton determined Anthony Reijm (Reijm) should be taken into custody and booked into the county jail. At the time, Skagit County Corrections Deputy Randall was working as a "court rover" providing security for District Court and Superior Court judges. Judge Skelton summoned Randall and told her in open court to take Reijm to be booked into jail. Judge Skelton "said nothing further" to Randall. CP 116. Randall did not handcuff Reijm, and, after they left the courtroom, Reijm tried to escape, injuring Lallas in the process.

Lallas brought this action against the County, Randall, and others, alleging that Randall acted negligently in transporting Reijm to the jail, and that the County is vicariously liable for Randall's negligence. Lallas contends Randall's failure to handcuff Reijm violated the County Sheriff Office's written policy and procedures manual governing "Transportation of Inmates." See Lallas Br. at 4.[1]

[1] Lallas separately contends the County was negligent in failing to properly train Randall. See Lallas Br. at 3, 19, 21.

Both the County and Randall sought summary judgment of dismissal based on the doctrine of judicial immunity, and the superior court granted this motion.

Lallas appealed to the Court of Appeals, Division I, which reversed. The court held that judicial immunity did not apply because there is a distinction "between the substance of a judge's order and the manner in which it is carried out." Lallas, 144 Wn.App. at 120. The court concluded Randall's function was executive, not judicial, and subjected Randall and the County to potential tort liability:

> Deputy Randall performed an executive function when she carried out that order and chose to take Reijm into custody without using handcuffs. She is not being called upon to answer for anything Judge Skelton did or failed to do. She is being called upon to answer for her own conduct. Allowing Deputy Randall to be sued for the manner in which she carried out Judge Skelton's directive is not a collateral attack on Judge Skelton's decision to send Reijm to jail. It will not threaten the independence of judges who must make future decisions to have litigants taken into custody.

Id.[2]

This Court granted the County and Randall's petition for review.

III. ISSUES PRESENTED

1. Whether Skagit County Corrections Deputy Randall is immune from tort liability under the doctrine of judicial immunity for negligently transporting a prisoner to jail, on

[2] In dicta, the Court of Appeals suggested that Deputy Randall may be entitled to a qualified immunity under Washington case law. See Lallas at 121.

the basis that she was implementing a court order to incarcerate the prisoner?

2. If Deputy Randall is entitled to judicial immunity, does this immunity extend to her employer, Skagit County?

IV. SUMMARY OF ARGUMENT

The common law doctrine of judicial immunity does not apply in this case. The gravamen of Lallas' tort claim against Randall and the County is negligence in the manner in which Randall transported Reijm to jail. In ordering Reijm's incarceration, Judge Skelton performed a normal judicial function, one intimately involved in the judicial process. On the other hand, in escorting the prisoner to jail Randall was not performing a normal judicial function. Instead, she was engaged in a purely ministerial act, readily subject to a standard of care and traditional negligence analysis. This understanding of judicial immunity is wholly consistent with the public policy underlying the doctrine - fostering fearless decision-making and administration of justice by judges and judicial officers. It is also in keeping with similar limits placed on immunities accorded the legislative and executive branches of government.

V. ARGUMENT

A. Overview Of Judicial Immunity And Related Governmental Immunities, And The Functional Analysis Required To Determine Whether Judicial Immunity Applies.

With the modern waiver of sovereign immunity, there has been an increased focus on longstanding common law governmental immunities, including judicial immunity. See Ch. 4.92 RCW (state waiver of sovereign immunity); Ch. 4.96 RCW (waiver of sovereign immunity as to local governmental entities); Restatement (Second) of Torts, § 895B & Comment (1979-2009 ed.) (discussing sovereign immunity, modern waiver thereof, and other governmental immunities). Judicial immunity is an absolute immunity that operates as a complete defense to tort liability. See Adkins v. Clark County, 105 Wn.2d 675, 677, 717 P.2d 275 (1986). It is a court-made doctrine, grounded in a public policy of assuring fearless decision-making and administration of justice. See generally Creelman v. Svenning, 67 Wn.2d 882, 884-85, 410 P.2d 606 (1966); Mauro v. Kittitas County, 26 Wn.App. 538, 540, 613 P.2d 195 (1980); Adkins, 105 Wn.2d at 677-78.

This Court has referred to "true judicial immunity" as that immunity available to judges and those participants in the judicial process to whom judicial immunity has been extended. See Lutheran Day Care v. Snohomish County, 119 Wn.2d 91, 100, 829 P.2d 746 (1992). These

participants include those who assist judges in performing official duties and are in effect "the alter ego of the judge." See Adkins, 105 Wn.2d at 678 (recognizing bailiff as alter ego under particular facts).

This Court also recognizes what is termed "quasi-judicial immunity." This too is an absolute immunity. See Lutheran Day Care, 119 Wn.App. at 99. In one sense, this doctrine describes the immunity accorded to persons or entities "performing functions comparable to those performed by judges." Id. (referencing administrative judges performing judge-like duties); id. at 101 (referencing hearing officers). In another sense, quasi-judicial immunity describes those who are intimately involved in the adjudicative process, such as prosecuting attorneys. See id. at 101; Creelman, 67 Wn.2d at 884 (noting prosecuting attorney acts in quasi-judicial capacity).

There is some dispute between the parties as to whether this case involves judicial immunity or quasi-judicial immunity. Compare County/Randall Pet. for Rev. at 5-6 & County/Randall Br. at 2, with Lallas Br. at 12-18. To a great extent, this question is academic, given that both immunities are absolute in nature under Washington law. Nonetheless, it appears that this case more accurately involves a claim of judicial immunity because the County and Randall contend Randall is entitled to immunity on the grounds that she "obeyed a judicial order,"

County/Randall Pet. for Rev. at 9, and "had the discretion to effect Judge Skelton's order...without the use of handcuffs," id. at 15.

Judicial immunity, like other immunities, is not favored in the law, and the party asserting it must prove entitlement to this defense. See Lutheran Day Care at 105-06. Entitlement to this immunity is not based upon mere status, and the title of the official claiming immunity is not determinative. See Lallas, 144 Wn.App. at 118. Rather, the immunity turns upon a functional analysis, and whether the person invoking the defense was performing an act *intimately associated with the judicial process*. See Mauro, 26 Wn.App. at 540; Adkins, 105 Wn.2d at 678 (citing Mauro with approval).

For example, in Adkins, Clark County and the State were sued in tort when the plaintiffs' successful verdict in a personal injury action was vacated because the bailiff improperly provided the jury with a dictionary to assist in its deliberations, and plaintiffs lost the case on retrial. This Court applied judicial immunity, holding:

> The trial court concluded the conduct of the bailiff was intimately associated with the judicial process. We agree. If the bailiff is viewed as speaking for the judge, then the bailiff's action in this case was within the color of her jurisdiction. One of the judge's duties is to determine what information can be given to the jury. The bailiff, as the judge's alter ego, did this, even though she may have been acting incorrectly or in excess of her authority.

> The duty imposed upon the bailiff, as a judicial officer, is a judicial duty; her failure to perform it properly is a judicial and not an individual injury. Judicial immunity for the bailiff in this situation is consistent with Washington law.

Id. at 678-79. In reaching this result, the Court rejected the argument that the bailiff's actions were ministerial in nature, implicitly distinguishing Mauro. See Adkins at 678.

In Mauro, county officials negligently failed to effectuate a court order withdrawing an arrest warrant. Mauro sued the county for false arrest on this basis. The superior court dismissed, applying judicial immunity. The Court of Appeals reversed, concluding:

> The act in this case was not a judicial act because the order had been executed by the judge. It was not a discretionary act, but was a purely ministerial act of the clerk of either the court or the sheriff's department.
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> * * *
>
> On the facts of this case, judicial immunity may not be used to shield the county from a suit for damages based on the ministerial nonfeasance of an employee of the county.

Id., 26 Wn.App. at 540, 541 (footnote omitted).

This type of functional analysis is not unique to the doctrine of judicial immunity. Similar approaches are used when determining whether government employees are entitled to absolute immunity for legislative or executive decision-making. See Mission Springs v. City of

Spokane, 134 Wn.2d 947, 952, 969-70, 954 P.2d 250 (1998) (employing functional analysis in refusing to apply legislative immunity to city council's decision to withhold ministerial land use permit); Mason v. Bitton, 85 Wn.2d 321, 323-29, 534 P.2d 1360 (1975) (recognizing viability of negligence claim and refusing to apply discretionary immunity because high-speed pursuit by law enforcement officers involved operational or ministerial acts, rather than basic policy discretion).[3]

Under the foregoing analysis, it remains to determine whether or not Deputy Randall was functioning in a judicial capacity at the time she escorted Reijm to jail.

B. Because The Gravamen Of Lallas' Claim Against Deputy Randall Is Negligence In Performing The Ministerial Function Of Escorting A Prisoner To Jail, Judicial Immunity Does Not Apply.

In undertaking the functional analysis required to determine whether judicial immunity applies, the gravamen of the underlying tort claim is the focus of attention. See Babcock v. State, 116 Wn.2d 596, 610, 809 P.2d 143 (1991). If Lallas were challenging the correctness of the

[3] For that matter, a similar type analysis is employed in assessing whether a parent is entitled to absolute parental immunity. See Zellmer v. Zellmer, 164 Wn.2d 147, 154-69, 188 P.3d 497 (2008) (upholding parental immunity doctrine regarding negligence-based claims, but restricting doctrine to conduct involving exercise of parental responsibilities); see also Borst v. Borst, 41 Wn.2d 642, 658, 251 P.2d 149 (1952) (refusing to apply parental immunity to child's negligence action based upon parent's operation of a business vehicle); Merrick v. Sutterlin, 93 Wn.2d 411, 416, 610 P.2d 361 (1980) (holding child's tort action against parent based upon negligent driving not subject to parental immunity doctrine).

underlying order sending Reijm to jail, then judicial immunity would apply, unless the court acted in a complete absence of all jurisdiction. See Mireles v. Waco, 502 U.S. 9, 13 (1991). However, this is not the case here because Lallas challenges the *manner in which the order of the court was carried out.* Under a functional analysis, the question is whether judges normally escort persons to jail. They do not. This task is a purely ministerial one, not intimately associated with the judicial process. See Adkins at 678; see also Mireles at 13.

This case should be controlled by the Court of Appeals opinion in Mauro, supra. In Mauro, judicial immunity did not apply where county employees failed to perform the ministerial act of effectuating a court order to expunge a record. See 26 Wn.App. at 538-39. Similarly, Randall allegedly failed to carry out a court order in a non-negligent manner. The act of escorting a prisoner to jail is ministerial in nature, is subject to a discernable standard of care, and is readily susceptible to a negligence-based analysis. Cf. Mason v. Bitton, 85 Wn.2d at 328 (refusing to apply discretionary immunity to operational decision regarding the manner of conducting a police chase).[4]

[4] While the Court of Appeals also applied a functional approach in concluding judicial immunity did not apply, it did so mainly by evaluating conflicting federal circuit court opinions and adopting the analysis of the Seventh Circuit in Richman v. Sheahan, 270 F.3d 430 (7th Cir. 2001). See Lallas at 118-20. This was unnecessary, as Washington precedent provides the guiding principles for resolving the issue here. Moreover, these

Adkins, upon which the County relies, is distinguishable. Critically, the bailiff in Adkins was considered to be the alter ego of the judge, because she performed the judicial function of determining "what information can be given to the jury." See 105 Wn.2d at 678. Because this function is normally performed by a judge, judicial immunity applied in that instance. In contrast, escorting a prisoner to jail is not a normal judicial function. Randall cannot invoke judicial immunity in this case. This result does not jeopardize the public policy underlying the doctrine of judicial immunity.[5]

Since Randall is not entitled to judicial immunity, it is unnecessary to determine whether immunity would extend to Skagit County, as Randall's employer. See County/Randall Pet. for Rev. at 2, 20 (urging County entitled to "imputed municipal immunity," based on Randall's judicial immunity); County/Randall Br. at 3, 4, 14-17 (contending

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federal cases involve alleged use of excessive force by public officials attempting to restore order in a courtroom while under a judge's supervision and control. See Richman, 270 F.3d at 433-34, 435-37.

[5] There are other *qualified* immunities available to certain governmental employees based upon statute or the common law. The Court of Appeals suggested that Randall may be entitled to a qualified immunity in these circumstances. See Lallas at 121(citing Savage v. State, 127 Wn.2d 434, 445-47, 899 P.2d 1270 (1995)). The briefing does not indicate this issue was raised on summary judgment. Although RAP 2.5(a)(3) allows this Court to affirm the superior court on any grounds present in the record, the briefing suggests there is little factual development below on this issue, and the parties have not briefed it on appeal. Consequently, this brief does not address the question of qualified immunity.

Randall's judicial immunity entitles County to "imputed judicial immunity").[6]

VI. CONCLUSION

The Court should adopt the argument advanced in this brief and conclude the doctrine of judicial immunity does not apply in this case.

DATED this 18th day of September, 2009.

BRYAN P. HARNETIAUX *

DAVID P. GARDNER *

GEORGE M. AHREND by Bryan P. Harnetiaux with authority *

On Behalf of WSAJ Foundation

*Document to be transmitted for filing by email; signed original retained by counsel.

[6] This Court has previously held that judicial immunity of a governmental official extends to the governmental entity, too. See Creelman, 67 Wn.2d at 885.